STATE OF VERMONT

HUMAN SERVICES BOARD

In re)	Fair	Hearing	No.	R-05/09-272
)				
Appeal of)				

INTRODUCTION

The petitioner appeals the decision by the Department for Children and Families, Economic Services Division, refusing to grant her an Administrative Disqualification Hearing for an alleged intentional violation of the regulations for Food Stamps. The Department has moved to dismiss the petitioner's appeal on jurisdictional grounds. The facts necessary to frame the issue of jurisdiction are not in dispute.

DISCUSSION

On April 22, 2009 the petitioner signed an Administrative Disqualification Hearing Waiver waiving her right to a hearing to contest the Department's imposition of penalties regarding her Food Stamps. On April 27, 2009 the Department sent the petitioner a notice, based on her Waiver, finding her ineligible for Food Stamps for one year effective

¹ Food Stamp Disqualification Hearings are conducted by Human Services Board hearing officers acting as the Department's designees. These hearings are not under the aegis of the Board or its rules under 3 V.S.A. § 3091(a).

April 22, 2009. On May 12, 2009, the petitioner, through counsel, appealed the Department's decision to the Board.

At a telephone status conference held on June 5, 2009, the petitioner's representative indicated that the sole basis of her request to set aside or invalidate her waiver was the petitioner's allegation that she did not have the capacity to understand the force and effect of the waiver she had signed.

The petitioner's representative concedes she has no claim or argument distinguishing the facts or circumstances in this matter from the 1991 decision by the Vermont Supreme Court in Bourne v. Dept. of Social Welfare, 156 Vt. 219. In that case the Court reversed a decision by the Human Services Board allowing that petitioner to withdraw her waiver and ordering the Department to hold a Disqualification Hearing, based on that petitioner's claim that the Department had obtained her waiver through misrepresentation and duress.

The federal and state regulations relied upon by the Bourne Court are essentially unchanged. This petitioner's factual allegations are indistinguishable from Bourne, and arguably less compelling. Unlike in Bourne, this petitioner does not allege any misrepresentation or imposition of duress by the Department in the obtaining of her Waiver. Also, this petitioner's appeal is less timely than in Bourne in that she

did not file a request for Fair hearing until after the

Department had actually imposed the disqualification period.

Thus, if anything, it must be concluded that she has even

less claim to the Board's jurisdiction than did the

petitioner in Bourne.²

ORDER

The Department's Motion to Dismiss the petitioner's appeal based on the Board's lack of subject matter jurisdiction is granted.

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 $^{^2}$ As the *Bourne* Court specifically noted, this petitioner is not without a legal remedy. It just isn't the Human Services Board.